Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 October 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Article 15 — Transfer of a case to a court of another Member State — Scope — Conditions under which applicable — Court better placed — Best interests of the child)

In Case C-428/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 31 July 2015, received at the Court on 4 August 2015, in the proceedings

Child and Family Agency

v

J. D.,

intervening party:

R. P. D.,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský (Rapporteur), M. Safjan and D. Šváby, Judges,

Advocate General: M. Wathelet,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 May 2016,

after considering the observations submitted on behalf of:

— Child and Family Agency, by L. Jonker, Solicitor, T. O'Leary SC, and D. Leahy, Barrister,

— Ms D., by I. Robertson, Solicitor, M. de Blacam SC, and G. Lee, BL,

— the child R. P. D., by G. Irwin, Solicitor, G. Durcan SC, S. Fennell BL, and N. McDonnell BL,

— Ireland, by E. Creedon, L. Williams and A. Joyce, acting as Agents, and A. Carroll BL,

* Language of the case: English

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 16 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

2 The request has been made in proceedings between the Child and Family Agency ('the Agency') and Ms J. D., on the question of what is to happen to her second child, the young boy R.

Legal context

3 Recitals 5, 12, 13 and 33 of Regulation No 2201/2003 state:

'(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

...

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

...

(33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union.'

4 Article 1 of Regulation No 2201/2003, headed ‘Scope’, provides:

‘1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

...

(b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

(a) rights of custody and rights of access;

...

(d) the placement of a child in a foster family or in institutional care;

...’

5 Article 2(7) of Regulation No 2201/2003 states that, for the purposes of that regulation:

‘the term “parental responsibility” shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access’.

6 Chapter II of that regulation, headed ‘Jurisdiction’, contains Section 2, headed ‘Parental responsibility’, which sets out, in Articles 8 to 15, a body of rules relating to the jurisdiction of the courts of the Member States in that field.

7 Article 8(1) of Regulation No 2201/2003, headed ‘General jurisdiction’, provides:

‘The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the Court is seised.’

8 Article 15 of Regulation No 2201/2003, headed ‘Transfer to a court better placed to hear the case’, provides:

‘1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other member state in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court’s own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the courts own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 Ms D. is a national of the United Kingdom.

10 Ms D's first child was placed in institutional care in the United Kingdom in 2010, after Ms D. was diagnosed as suffering from an 'anti-social' personality disorder, and had, further, physically abused that child.

11 While Ms D. was still resident in the United Kingdom, she was, in the light of the medical and family history, subject to a 'pre-birth assessment' carried out on 27 August 2014 by the child protection authorities of her place of residence in anticipation of the birth of her second child, R. It was established in that assessment that Ms D. had shown affection for her first child, that she had a positive outlook regarding the birth of R., that she had made arrangements for that birth and that she had, in particular, expressed willingness to cooperate with social workers in that respect. The competent authorities nonetheless considered that R. should after his birth be placed in the care of a foster family, pending the commencement of adoption proceedings by a third party.

12 Ms D. then gave up her tenancy in the United Kingdom and sold her belongings there, and then moved to Ireland, on 29 September 2014. R. was born in Ireland on 25 October 2014. Mother and child have resided there since that date.

13 Shortly after R.'s birth, the Agency made an application to the District Court having jurisdiction for an order that the child should be placed in care. That application was however dismissed on the ground that hearsay evidence from the United Kingdom on which the Agency relied was inadmissible.

14 An appeal having been brought before it by the Agency, the Circuit Court having jurisdiction ordered the provisional placement of R. in foster care. That measure has since been regularly renewed. Ms D. was however granted the right of regular access to her child, a right she has exercised.

15 The Agency further made an application to the High Court requesting that the substance of the case be transferred to the High Court of Justice of England and Wales, pursuant to Article 15 of Regulation No 2201/2003. That application was supported by R.'s *guardian ad litem*.

16 By a judgment of 26 March 2015, the High Court authorised the Agency to make an application to the High Court of Justice of England and Wales to assume jurisdiction in relation to the case at issue.

17 Ms D. sought leave to bring an appeal against that judgment directly before the Supreme Court, which granted that leave, having heard the parties.

18 In its order for reference, the Supreme Court seeks to ascertain, first, whether Article 15 of Regulation No 2201/2003 can be applied in an action concerning proceedings brought under public law concerning the placement of a child, such as the action brought before the Supreme Court, notwithstanding the fact that no proceedings are currently pending in the United Kingdom and that it is therefore a necessary consequence of the courts of that Member State assuming jurisdiction that the child protection authorities of that Member State thereafter agree to take responsibility for the case of R., by commencing such proceedings on the basis of United Kingdom domestic law.

19 Second, the referring court is uncertain how the concept of the 'best interests of the child' stated in Article 15 of Regulation No 2201/2003 is to be interpreted. The Supreme Court is of the view that that article does not require the court that normally has jurisdiction to hear a case, when it is contemplating the transfer of that case to a court of another Member State that it considers to be better placed, to undertake a full examination of the best interests of the child. The Supreme Court considers that the court which normally has jurisdiction must rather make a summary assessment of that matter, based on the principle that it is in the best interests of the child that it should be the court that is better placed to assess the situation that should do so, and the court of the other Member State has the duty to carry out a more thorough analysis.

20 Last, the referring court has doubts as to the factors to be taken into consideration when making such a summary assessment. In that regard, the Supreme Court states that the departure of Ms D. from the United Kingdom in order to settle in Ireland before the birth of R. was entirely lawful, but is uncertain whether it is nonetheless possible to take into consideration the fact that her departure was motivated by the fear that that child might be taken away from her by the child protection services in the United Kingdom.

21 In those circumstances, the Supreme Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Article 15 of Regulation No 2201/2003 apply to public law care applications by a local authority in a Member State, when[,] if the Court of another Member State assumes jurisdiction, it will necessitate the commencement of separate proceedings by a different body pursuant to a different legal code and possibly, if not probably, relating to different factual circumstances?

(2) If so, to what extent, if any, should a court consider the likely impact of any request under Article 15[,] if accepted, upon the right of freedom of movement of the individuals affected?

(3) If the "best interests of the child" in Article 15(1) of Regulation No 2201/2003 refers only to the decision as to forum, what factors may a court consider under this heading, which have not already been considered in determining whether another court is "better placed"?

(4) May a court for the purposes of Article 15 of Regulation No 2201/2003 have regard to the substantive law, procedural provisions, or practice of the courts of the relevant Member State?

(5) To what extent should a national court, in considering Article 15 of Regulation No 2201/2003, have regard to the specific circumstances of the case, including the desire of a mother to move beyond the reach of the social services of her home State, and thereafter give birth to her child in another jurisdiction with a social services system she considers more favourable?

(6) Precisely what matters are to be considered by a national court in determining which court is best placed to determine the matter?'

Procedure before the Court

22 The referring court requested that the case should be dealt with under the urgent preliminary ruling procedure provided for by Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court.

23 On 14 August 2015 the Court decided, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, that there was no need to grant that request, having determined that the circumstances set out in support of that request did not establish the urgency required to justify the application of that procedure.

24 The Court did, however, decide that the case would be given priority over others, pursuant to Article 53(3) of the Rules of Procedure.

The requests to reopen the oral procedure

25 Following the delivery of the Opinion of the Advocate General, on 16 June 2016, the Agency and Ireland, by documents respectively lodged at the Registry of the Court on 5 and 19 August 2016, requested the Court to order the reopening of the oral part of the procedure, claiming that it was necessary to clarify the presentation of the procedural background of the main proceedings, as submitted by the referring court.

26 In that regard, Article 83 of the Rules of Procedure provides that the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information.

27 In this case, the Court, after hearing the Advocate General, considers that it nonetheless has sufficient information, the material required to give a ruling being in the documents before the Court and the parties having been able to state their views on that subject both in writing and orally. Accordingly, there is no need to reopen the oral part of the procedure.

Consideration of the questions referred for a preliminary ruling

The first question

28 By its first question, the referring court seeks, in essence, to ascertain whether Article 15 of Regulation No 2201/2003 must be interpreted as meaning that it is applicable where a child protection application, such as that at issue in the main proceedings, has been brought under public law by the competent authority of a Member State, in a situation where it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other Member State thereafter bring proceedings that are separate from those brought in the first Member State, pursuant to its own national law and having regard to possibly different factual circumstances.

29 It must, first, be observed that, on the one hand, Article 15 of Regulation No 2201/2003 is in Section 2 of Chapter II of that regulation, that section establishing a body of rules of jurisdiction in cases concerning parental responsibility, and, on the other, Article 15 lays down a specific rule of jurisdiction that derogates from the general rule of jurisdiction, laid down in Article 8 of that regulation, that designates the courts of the place where the child is habitually resident as the courts having jurisdiction as to the substance of those cases.

30 Taking into consideration the structure of Section 2 of Chapter II of Regulation No 2201/2003 and the place occupied in that section by Article 15, it must be held that the scope *ratione materiae* of Article 15 is the same as that of the body of rules of jurisdiction laid down in that section, and in particular that of Article 8 of that regulation (see, to that effect, judgment of 19 November 2015, P, C-455/15 PPU, EU:C:2015:763, paragraph 44).

31 In that regard, it is certainly stated in Article 1(1) and (2) of Regulation No 2201/2003 that those rules of jurisdiction apply to 'civil matters' relating to the attribution, exercise, delegation or termination of parental responsibility, the latter concept being defined in Article 2(7) of that regulation.

32 However, the Court has previously held, on a number of occasions, that the rules of jurisdiction laid down by Regulation No 2201/2003 in the matters of parental responsibility must be interpreted, in the light of recital 5 of that regulation, as meaning that they are applicable in cases relating to parental responsibility concerning the adoption of child protection measures, including cases where those measures are considered, under the domestic law of a Member State, to be governed by public law (see, to that effect, judgments of 27 November 2007, *C*, C-435/06, EU:C:2007:714, paragraphs 34, 50 and 51; of 2 April 2009, *A*, C-523/07, EU:C:2009:225, paragraphs 24 and 27 to 29, and of 26 April 2012, *Health Service Executive*, C-92/12 PPU, EU:C:2012:255, paragraphs 60 and 61).

33 It follows from the foregoing that Article 15 of Regulation No 2201/2003 is applicable where a child protection application concerning the adoption of measures relating to parental responsibility is brought under public law by the competent authority of a Member State.

34 As regards, second, the question whether Article 15 of Regulation No 2201/2003 can be applied in a situation where it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that Member State thereafter commence proceedings that are separate from those brought in the first Member State, pursuant to its own domestic law and having regard to possibly different factual circumstances, it must be observed that it follows from Article 15(1) that such an assumption of jurisdiction is subject to the condition that the court concerned has before it a request submitted either by the parties to the case or by the court having jurisdiction in the first Member State.

35 However, it cannot be inferred from either that article or any other article in Regulation No 2201/2003 that such a request, submitted either by the parties to the case or by the court that normally has jurisdiction, is subject to a procedural condition that is additional to that mentioned in the preceding paragraph.

36 That said, since the application of a national rule of procedure whereby it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that Member State thereafter commence proceedings that are separate from those brought in the first Member State can only be subsequent to a decision having been made by the court normally having jurisdiction to request the transfer of the case to a court of another Member State, pursuant to Article 15(1) of Regulation No 2201/2003, and to a decision having been made by that other court to assume jurisdiction on the basis of Article 15(5) of the regulation, that rule cannot be regarded as impeding the adoption of those decisions.

37 Further, Article 15 of Regulation No 2201/2003 does not preclude the possibility that the commencement of separate proceedings by the authority of the other Member State may lead the court of that other Member State to take account of factual circumstances that differ from those which might have been taken into account by the court initially having jurisdiction. On the contrary, such a possibility is inherent in the mechanism established by Article 15 of transfer to a court that is better placed.

38 For the reasons stated above, the answer to the first question is that Article 15 of Regulation No 2201/2003 must be interpreted as meaning that it is applicable where a child protection application brought under public law by the competent authority of a Member State concerns the adoption of measures relating to parental responsibility, such as the application at issue in the main proceedings, where it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other Member State thereafter commence proceedings that are separate from those brought in the first Member State, pursuant to its own domestic law and possibly relating to different factual circumstances.

The third, fourth and sixth questions

39 By its third, fourth and sixth questions, the referring court seeks guidance, in essence, as to how the concepts of the court that is 'better placed' and of 'the best interests of the child', referred to in Article 15(1) of Regulation No 2201/2003, are to be interpreted, and how they are linked.

40 Article 15(1) of Regulation No 2201/2003 provides that the courts of a Member State having jurisdiction as to the substance of a case may request the transfer of that case, or a specific part thereof, to a court of another Member State with which the child has a particular connection, if they consider that that court is better placed to hear the case, and where the transfer is in the best interests of the child.

41 Since the concepts of the court that is 'better placed' and 'the best interests of the child', under that provision, are not defined in any other provision of Regulation No 2201/2003, the Court must interpret those concepts by taking into account their context and the objectives pursued by that regulation.

42 First, it must be observed that it is stated in recital 12 of Regulation No 2201/2003 that the grounds of jurisdiction in matters of parental responsibility established in that regulation are shaped in the light of the best interests of the child.

43 The requirement that the transfer of a case to a court of another Member State must be in the best interests of the child constitutes, as stated in essence by the Advocate General in point 70 of his Opinion, an expression of guiding principle that was, on the one hand, followed by the legislature in designing Regulation No 2201/2003, and that must, on the other, determine the form of its application in cases relating to parental responsibility within its scope (see, to that effect, judgments of 11 July 2008, *Rinau*, C-195/08 PPU, EU:C:2008:406, paragraph 51; of 1 October 2014, *E.*, C-436/13, EU:C:2014:2246, paragraph 45, and of 12 November 2014, *L*, C-656/13, EU:C:2014:2364, paragraph 48).

44 In that regard, it must also be observed that the reason why the best interests of the child are taken into consideration, in the context of Regulation No 2201/2003, is, as is apparent from recital 33 of that regulation, to ensure respect for the child's fundamental rights (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraphs 53 to 55, and of 5 October 2010, *McB.*, C-400/10 PPU, EU:C:2010:582, paragraph 60).

45 In order to ensure that the best interests of the child are taken into consideration when applying the rules of jurisdiction established by Regulation No 2201/2003 in matters of parental responsibility, the EU legislature had recourse, as is stated in recital 12 of that regulation, to the criterion of proximity.

46 Under that criterion, the jurisdiction of the courts of the Member States in matters of parental responsibility is, as a general rule, determined, in accordance with Article 8(1) of Regulation No 2201/2003, by where the child is habitually resident at the time the courts are seised.

47 However, Article 15(1) of Regulation No 2201/2003 permits the transfer of a given case to a court of a Member State other than that of the court that normally has jurisdiction, provided, as is stated in recital 13 of that regulation, that such a transfer meets specific conditions, on the one hand, and that it occurs by way of exception, on the other.

48 Thus, the rule of transfer to a court of another Member State laid down in Article 15(1) of Regulation No 2201/2003 constitutes a special rule of jurisdiction that derogates from the general rule of jurisdiction laid down in Article 8(1) of that regulation, and consequently it must be interpreted strictly (see, by analogy, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 38, and of 21 October 2015, *Gogova*, C-215/15, EU:C:2015:710, paragraph 41).

49 Against that background, Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court of a Member State that normally has jurisdiction to deal with a given case must, if it is to be able to request a transfer to a court of another Member State, be capable of rebutting the strong presumption in favour of maintaining its own jurisdiction, on the basis of that regulation, as stated by the Advocate General in point 90 of his Opinion.

50 More specifically, it must be recalled, first, that, under Article 15(1) of Regulation No 2201/2003, the transfer of a case concerning matters of parental responsibility, by a court of a Member State, must be made only to a court of another Member State with which the child concerned has a 'particular connection'.

51 In order to establish the existence of such a connection in a given case, reference must be made to the factors that are listed, exhaustively, in Article 15(3)(a) to (e) of Regulation No 2201/2003. It follows that cases where those factors are lacking are immediately excluded from the transfer mechanism.

52 It is however clear that those factors are all — if not expressly, at least in essence — evidence of a relation of proximity between the child concerned in the case and a Member State other than that of the court having jurisdiction to hear the case on the basis of Article 8(1) of that regulation.

53 The first two factors relate to the residence acquired by the child concerned in the other Member State in question, either before or after the court normally having jurisdiction has been seised. The third factor deals with the nationality of that child. The fourth factor identifies, in the relevant proceedings, a relation of proximity between that child and the other Member State because of the property of the child located in that State. Last, the fifth factor is based on a relation of proximity that the child has with a given Member State through his/her family members.

54 In the light of the nature of those factors, it must be held that, when applying Article 15(1) of Regulation No 2201/2003 to a given case, the court having jurisdiction must compare the extent and degree of the relation of 'general' proximity that links it to the child concerned, under Article 8(1) of that regulation, with the extent and degree of the relation of 'particular' proximity demonstrated by one or more of the factors set out in Article 15(3) of that regulation that exists, in the particular case, between that child and certain other Member States.

55 That said, the existence of a 'particular connection', within the meaning of Article 15(1) of Regulation No 2201/2003, relevant to the circumstances of the case, between the child and another Member State does not necessarily, in itself, prejudge either the question whether, in addition, a court of that other Member State is better placed to deal with the case than the court having jurisdiction, or, if that other court is in fact better placed, the issue whether the transfer of the case to that other court is in the best interests of the child.

56 Consequently, it remains the task of the court having jurisdiction to determine, secondly, whether there is, in the Member State with which the child has a particular connection, a court that is better placed to hear the case.

57 To that end, the court having jurisdiction must determine whether the transfer of the case to that other court is such as to provide genuine and specific added value, with respect to the decision to be taken in relation to the child, as compared with the possibility of the case remaining before that court. In that context, the court having jurisdiction may take into account, among other factors, the rules of procedure in the other Member State, such as those applicable to the taking of evidence required for dealing with the case. However, the court having jurisdiction should not take into consideration, within such an assessment, the substantive law of that other Member State which might be applicable by the court of that other Member State, if the case were transferred to it. If the court were to take that into consideration, doing so would be in breach of the principles of mutual trust between Member States and mutual recognition of judgments that are the basis of Regulation No 2201/2003 (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 45, and of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraphs 70 and 71).

58 Third and last, the requirement that the transfer must be in the best interests of the child implies that the court having jurisdiction must be satisfied, having regard to the specific circumstances of the case, that the envisaged transfer of the case to a court of another Member State is not liable to be detrimental to the situation of the child concerned.

59 To that end, the court having jurisdiction must assess any negative effects that such a transfer might have on the familial, social and emotional attachments of the child concerned in the case or on that child's material situation.

60 In that context, the court having jurisdiction may also decide, on the basis of Article 15(1) of Regulation No 2201/2003, to request the transfer, not of the whole case, but only of a specific part of that case, if the particular circumstances justify it. That option may, in particular, be envisaged when the relation of proximity with another Member State does not directly concern the child as such, but one of the holders of parental responsibility, on the ground stated in Article 15(3)(d) of Regulation No 2201/2003.

61 For the reasons stated above, the answer to the third, fourth and sixth questions is that Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that:

— in order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as to provide genuine and specific added value to the examination of that case, taking into account, inter alia, the rules of procedure applicable in that other Member State;

— in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, that that transfer is not liable to be detrimental to the situation of the child.

The second and fifth questions

62 By its second and fifth questions, the referring court seeks in essence to ascertain whether Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must take into account, when applying that provision in a given case relating to parental responsibility, the effect that a possible transfer of that case to a court of another Member State may have on the right of freedom of movement of the persons concerned or the reasons why the mother of the child concerned exercised that right, prior to that court being seised.

63 In that regard, it must be recalled that, as stated in paragraph 42 of this judgment, the rule laid down in Article 15(1) of Regulation No 2201/2003 is designed, like the other rules of jurisdiction laid down by that regulation in matters of parental responsibility, in the light of the best interests of the child, and that the question whether, in a given case, the transfer of the case is in the best interests of the child requires, inter alia, as stated in paragraph 58 of this judgment, a determination that such a transfer is not liable to be detrimental to the situation of the child concerned.

64 It follows that, if a possible transfer of the case was liable to be detrimental to the right of freedom of movement of the child concerned, that would be one of the factors to be taken into consideration when applying Article 15(1) of Regulation No 2201/2003.

65 On the other hand, considerations relating to other persons who may be concerned in the case ought not, as a general rule, to be taken into account, unless those considerations also have relevance to the assessment of that risk with respect to the child.

66 Consequently, the possible effect of such a transfer on the right of freedom of movement of other persons concerned, including the mother of the child in question, should not be taken into consideration by the court having jurisdiction, provided that there are not liable to be adverse repercussions on the situation of that child. The same applies with respect to the reason why the mother of the child exercised her right of freedom of movement, prior to the court having jurisdiction being seised.

67 It follows that the answer to the second and fifth questions is that Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must not take into account, when applying that provision in a given case relating to parental responsibility, either the effect of a possible transfer of that case to a court of another Member State on the right of freedom of movement of persons concerned other than the child in question, or the reason why the mother of that child exercised that right, prior to that court being seised, unless those considerations are such that there may be adverse repercussions on the situation of that child.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 15 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that it is applicable where a child protection application brought under public law by the competent authority of a Member State concerns the adoption of measures relating to parental responsibility, such as the application at issue in the main proceedings, where it is a necessary consequence of a court of another Member State assuming jurisdiction that an authority of that other Member State thereafter commence proceedings that are separate from those brought in the first Member State, pursuant to its own domestic law and possibly relating to different factual circumstances.**

2. **Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that:**

   — **in order to determine that a court of another Member State with which the child has a particular connection is better placed, the court having jurisdiction in a Member State must be satisfied that the transfer of the case to that other court is such as to provide genuine and specific added value to the examination of that case, taking into account, inter alia, the rules of procedure applicable in that other Member State;**

   — **in order to determine that such a transfer is in the best interests of the child, the court having jurisdiction in a Member State must be satisfied, in particular, that that transfer is not liable to be detrimental to the situation of the child.**

3. **Article 15(1) of Regulation No 2201/2003 must be interpreted as meaning that the court having jurisdiction in a Member State must not take into account, when applying that provision in a given case relating to parental responsibility, either the effect of a possible transfer of that case to a court of another Member State on the right of freedom of movement of persons concerned other than the child in question, or the reason why the mother of that child exercised that right, prior to that court being seised, unless those considerations are such that there may be adverse repercussions on the situation of that child.**

[Signatures]